

REMARKS

Claims 60, 62-71, and 93-103 stand rejected under 35 USC §103(a) over US Pat. No. 6,711,263 to Nordenstam et al ("Nordenstam") in view of U. S. Patent No. 6,433,671 to Nysen ("Nysen").

Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1733 (Sup. Ct. 2007) (Quoting *Graham v. John Deere Co. of Kansas City*, 86 S. Ct. (Sup. Ct. 1966)). Accordingly, an essential step in determining whether an invention is obvious is consideration of the elements being claimed.

With respect to independent claim 60, the claim recites elements relating to "transmission of an RF signal at a predetermined power level of less than or equal to 1mW," in combination with numerous additional elements. Relative to the above combination, the Examiner has made a reference to Nysen which teaches:

a method for interrogating a backscatter generating tag, comprising the steps of (a) generating an interrogation signal having a frequency within an interrogation band; (b) emitting the interrogation signal as a radio wave signal; (c) interacting the emitted radio wave signal with a backscatter generating tag; (d) receiving a radio frequency backscatter signal from the tag; (e) mixing the received backscatter signal with a plurality of representations of the interrogation signal, each of said plurality of representations differing in phase, to produce a plurality of mixed signals; (f) comparing a respective signal strength of said plurality of mixed signals; and (h) analyzing said difference signals over time to determine a significant information sequence of the backscatter signal, while discounting an importance of at least one of the plurality of mixed signals at any given time based on said compared respective signal strengths. (*Col. 8 line 53 – col. 9 line 2*).

The applicant respectfully disagrees with the Examiner's assertion that the steps taught by Nysen of "mixing the received backscatter signal with a plurality of

representations of the interrogation signal" followed by "comparing a respective signal strength of said plurality of mixing signals" teach "transmitting an RF signal at a specified signal strength." *May 2, 2007 Office Action, page 8*. Nysen teaches comparing the signal strength of received backscatter signals mixed with the interrogation signals (Col. 8 lines 60-64, emphasis added), where the signal strength depends on the correlation between the returned (*i.e.*, received) RF signal and the reference (*i.e.*, the interrogation) signal. (Col. 33 line 66 – col. 34 line 2). The applicant respectfully asserts that Nysen's step of "comparing the signal strength of received signals" is materially different from the applicant's teaching of "transmit[ting] of an RF signal at a predetermined power level," since the former operation involves reception and processing RF signals, while the latter operation involves transmission of RF signals. Hence, the applicant respectfully asserts that the Examiner at least failed to show where in the relied upon references there is a teaching of "transmission of an RF signal at a predetermined power level of less than or equal to 1mW."

Further with respect to independent claim 60, the claim recites elements relating to "transmission of [an] RF signal having a predetermined polarity," in combination with numerous additional elements. Relative to the above combination, the Examiner has made a reference to Nysen which teaches "different antennas [which] may receive and radiate energy in different directions." (Col. 18 lines 9-10).

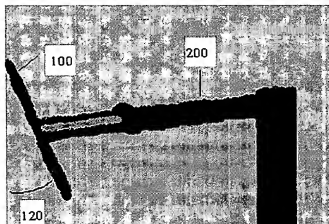


Fig. 1

The applicant respectfully asserts that while the direction of a dipole antenna is a direction of the feeder 200 (see Fig. 1), the polarity of a dipole antenna is an angle 120 between the axis 100 of dipoles and the vertical direction (or an angle between the axis 100 of dipoles and the horizontal direction).

Hence, the applicant respectfully asserts that the Examiner at least failed to show where in the relied upon references there is a teaching of "transmission of [an] RF signal having a predetermined polarity."

Thus, the Examiner has not considered all of the claim elements and therefore has not determined differences between the prior art and the claims at issue as is required under *Graham v. John Deere Co.* 127 S. Ct. 1727 (Sup. Ct. 1966). If the Examiner wishes to maintain an obviousness rejection of independent claim 60 over the combination of Nordenstam and Nysen, the Examiner is respectfully requested to show where in the relied upon references there are teachings related to "transmission of an RF signal at a predetermined power level of less than or equal to 1mW" and "transmission of [an] RF signal having a predetermined polarity."

For expediting an allowance, the applicant has amended independent claims 62 and 93 and dependent claims 65, 66, 98-100, and 103. The noted claims are believed to be allowable for the reason that they recite combinations not discussed or suggested in the prior art. It is emphasized that the amendments to claims 62, 93, 65, 66, 98-100, and 103 is without prejudice or disclaimer and that the applicant reserve the right to prosecute claims of the same scope or of broader scope than the claims prior to the present amendment in a related application (e.g., a continuation application). Also, the applicant maintains all positions in support of patentability previously asserted by the applicant.

For expediting an allowance, the applicant has cancelled without prejudice or disclaimer claims 64 and 95.

Dependent claims 63 and 94 are amended to correct minor typographical errors. The claim amendments are editorial in nature and neither alter the scope of the claims nor add new matter. In that the claim amendments respecting claims 63 and 94 do not alter the claim scope the claim amendments will not be regarded as "narrowing" claim amendments.

With respect to the claim rejections argued by the applicant herein *supra*, while the applicant herein may have highlighted a particular claim element of a claim for purposes of demonstrating an insufficiency of an examination on the part of an Examiner, the applicant's highlighting of a particular claim element for such purpose should not be taken to indicate that the applicant has taken the position that a particular claim element constitutes the sole basis for patentability out of the context of the various combinations of elements of the claim or claims in which it is present. The applicant notes that the applicant maintains the right here forward to assert that each claim is patentable by reason of any patentable combination recited therein.

No amendment presented herein contains new matter.

Accordingly, in view of the above amendments and remarks, the applicant believes all of the claims of the present application to be in condition for allowance and respectfully requests reconsideration and passage to allowance of the application.

If the Examiner believes that contact with the applicant's attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call the applicant's representative at the phone number listed below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-3577.

Dated: October 2, 2007

Respectfully submitted,

By George S. Blasiak

George S. Blasiak
Registration No.: 37,283
Marjama Muldoon Blasiak & Sullivan LLP
250 South Clinton Street
Suite 300
Syracuse, New York 13202
(315) 425-9000
Customer No. 20874

DA/sp/GSB/bs